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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10

11 Case No. C

12 Plaintiff,

STIPULATED PROTECTIVE ORDER_
FOR STANDARD LITIGATION

13 v.
14

15 Defendant.
16

17 1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve production of
19 confidential, proprietary, or private information for which special protection from public
20 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
21 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
22 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
23 all disclosures or responses to discovery and that the protection it affords from public disclosure
24 and use extends only to the limited information or items that are entitled under the applicable
25 legal principles to treatment as confidential. The parties further acknowledge, as set forth in
26 Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential
27 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
28 reflects the standards that will be applied when a party seeks permission from the court to file

1 material under seal.

2 2. DEFINITIONS

3 2.1 Party: any party to this action, including all of its officers, directors,
4 employees, consultants, retained experts, and ~~O~~outside ~~C~~counsel of Record (and their support
5 staff).

6 2.2 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.2—2.3 Disclosure or Discovery Material: all items or information,
9 regardless of the medium or manner generated, stored, or maintained (including, among other
10 things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or
11 responses to discovery in this matter.

12 2.43 “~~Confidential~~CONFIDENTIAL” Information or Items: information
13 (regardless of how generated, stored or maintained) or tangible things that qualify for protection
14 under standards developed under F.R.Civ.P. 26(c).

15 2.4 “~~Highly Confidential—Attorneys’ Eyes Only~~” Information or Items:
16 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or
17 nonparty would create a substantial risk of serious injury that could not be avoided by less
18 restrictive means. 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material

19 from a Producing Party.

20 2.6 Producing Party: a Party or non-party that produces Disclosure or
21 Discovery Material in this action.

22 2.7 Designating Party: a Party or non-party that designates information or
23 items that it produces in disclosures or in responses to discovery as
24 “~~Confidential~~CONFIDENTIAL.” or “~~Highly Confidential—Attorneys’ Eyes Only.~~”

25 2.8 Challenging Party: A Party or Non-Party that challenges the designation of
26 information or items under this Order.

27 2.98 Protected Material: any Disclosure or Discovery Material that is
28 designated as “~~Confidential~~CONFIDENTIAL.” or as “~~Highly Confidential—Attorneys’ Eyes~~

1 ~~Only.~~"

2 2.109- Outside Counsel of Record: attorneys who are not employees of a Party
3 but who are retained to represent or advise a Party and have appeared in this action on behalf of
4 that Party or are associated with a law firm which has appeared on behalf of that Party.

5 2.101 House Counsel: attorneys who are employees of a Party. House Counsel
6 does not include any Outside Counsel of Record or any other outside counsel.

7 2.124 Counsel (without qualifier): Outside Counsel of Record and House
8 Counsel (as well as their support staffs).

9 2.132 Expert: a person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
11 witness or as a consultant in this action ~~and who is not a past or a current employee of a Party or~~
12 ~~of a competitor of a Party's and who, at the time of retention, is not anticipated to become an~~
13 ~~employee of a Party or a competitor of a Party's. This definition includes a professional jury or~~
14 ~~trial consultant retained in connection with this litigation.~~

15 2.143 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
17 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
18 subcontractors.

19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only Protected
21 Material (as defined above), but also any information copied or extracted therefrom, as well as all
22 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
23 presentations by parties or counsel to or in court or in other settings that might reveal Protected
24 Material. However, the protections conferred by this Stipulation and Order do not cover the
25 following information: (a) any information that at the time of disclosure to a Receiving Party is
26 in the public domain or after its disclosure to a Receiving Party becomes part of the public
27 domain as a result of publication not involving a violation of this Order; or (b) any information
28 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the

1 disclosure from a source who obtained the information lawfully and under no obligation of
2 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed
3 by a separate agreement and/or order.

4 4. DURATION

5 Even after ~~the termination~~ final disposition of this litigation, the confidentiality
6 obligations imposed by this Order shall remain in effect until a Designating Party agrees
7 otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be
8 the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; or (2)
9 final judgment herein after the completion and exhaustion all appeals, rehearings, remands, trials
10 or reviews of this action, including the time limits for the filing of any motions or applications
11 for extension of time pursuant to applicable law.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

14 Each Party or non-party that designates information or items for protection under this Order must
15 take care to limit any such designation to specific material that qualifies under the appropriate
16 standards. To the extent it is practical to do so, the Designating Party ~~must take care to~~ should
17 designate for protection only those parts of material, documents, items, or oral or written
18 communications that qualify – so that other portions of the material, documents, items, or
19 communications for which protection is not warranted are not swept unjustifiably within the
20 ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that
22 are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
23 unnecessarily encumber or retard the case development process, or to impose unnecessary
24 expenses and burdens on other parties), expose the Designating Party to sanctions.

25 If it comes to a Designating Party's ~~or a non-party's~~ attention that information or
26 items that it designated for protection do not qualify for protection ~~at all, or do not qualify for the~~
27 level of protection initially asserted, that Designating Party ~~or non-party~~ must promptly notify all
28 other parties that it is withdrawing the mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this
2 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
3 Disclosure or Discovery Materials that qualifies for protection under this Order must be clearly
4 so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (~~apart from e.g., paper or electronic~~
7 ~~documents but not~~ transcripts of depositions or other pretrial or trial proceedings), that the
8 Producing Party affix the legend “CONFIDENTIAL” ~~or “HIGHLY CONFIDENTIAL—~~
9 ~~ATTORNEYS’ EYES ONLY” at the top of~~ each page that contains protected material. If only
10 a portion or portions of the material on a page qualifies for protection, the Producing Party also
11 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
12 margins) ~~and must specify, for each portion, the level of protection being asserted (either~~
13 ~~“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).~~

14 A Party or non-party that makes original documents or materials available for
15 inspection need not designate them for protection until after the inspecting Party has indicated
16 which material it would like copied and produced. During the inspection and before the
17 designation, all of the material made available for inspection shall be deemed “~~HIGHLY~~
18 ~~CONFIDENTIAL—ATTORNEYS’ EYES ONLY~~CONFIDENTIAL.” After the inspecting Party
19 has identified the documents it wants copied and produced, the Producing Party must determine
20 which documents, or portions thereof, qualify for protection under this Order, then, before
21 producing the specified documents, the Producing Party must affix the appropriate
22 “CONFIDENTIAL” legend (~~“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—~~
23 ~~ATTORNEYS’ EYES ONLY”~~) ~~at the top of~~ each page that contains Protected Material. If
24 only a portion or portions of the material on a page qualifies for protection, the Producing Party
25 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
26 margins) ~~and must specify, for each portion, the level of protection being asserted (either~~
27 ~~“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).~~

28 (b) for testimony given in deposition or in other pretrial or trial proceedings, that

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1 the Designating Party ~~or non-party offering or sponsoring the testimony~~ identify on the record,
2 before the close of the deposition, hearing, or other proceeding, all protected testimony, ~~and~~
3 ~~further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL—~~
4 ~~ATTORNEYS’ EYES ONLY.”~~ ~~When it is impractical to identify separately each portion of~~
5 ~~testimony that is entitled to protection, and when it appears that substantial portions of the~~
6 ~~testimony may qualify for protection, the Party or non party that sponsors, offers, or gives the~~
7 ~~testimony may invoke on the record (before the deposition or proceeding is concluded) a right to~~
8 ~~have up to 20 days to identify the specific portions of the testimony as to which protection is~~
9 ~~sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY~~
10 ~~CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).~~

11 ~~Only those portions of the testimony that are appropriately designated for~~
12 ~~protection within the 20 days shall be covered by the provisions of this Stipulated Protective~~
13 ~~Order. Transcript pages containing Protected Material must be separately bound by the court~~
14 ~~reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or~~
15 ~~“HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” as instructed by the Party or~~
16 ~~nonparty offering or sponsoring the witness or presenting the testimony.~~

17 (c) for information produced in some form other than documentary, and for any
18 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
19 container or containers in which the information or item is stored the legend “CONFIDENTIAL,”
20 ~~or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”~~ If only portions of the
21 information or item warrant protection, the Producing Party, to the extent practicable, shall
22 identify the protected portions, ~~specifying whether they qualify as “Confidential” or as “Highly~~
23 ~~Confidential—Attorneys’ Eyes Only.”~~

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items ~~as “Confidential” or “Highly Confidential—~~
26 ~~Attorneys’ Eyes Only”~~ does not, standing alone, waive the Designating Party’s right to secure
27 protection under this Order for such material. ~~If material is appropriately designated as~~
28 ~~“Confidential” or “Highly Confidential—Attorneys’ Eyes Only” after the material was initially~~

1 ~~produced~~ Upon timely correction of a designation, the Receiving Party, ~~on timely notification of~~
2 ~~the designation~~, must make reasonable efforts to assure that the material is treated in accordance
3 with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. ~~Any person or entity~~ Party or Non-Party may
6 challenge a designation of confidentiality at any time. Unless a prompt challenge to a
7 Designating Party's confidentiality designation is necessary to avoid foreseeable substantial
8 unfairness, unnecessary economic burdens, or a later significant disruption or delay of the
9 litigation, a Party does not waive its right to challenge a confidentiality designation by electing
10 not to mount a challenge promptly after the original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process by providing written notice of each designation it is challenging and describing
13 the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the
14 written notice must recite that the challenge to confidentiality is being made according to this
15 specific paragraph of the Protective Order. A Party that elects to initiate a challenge to a
16 Designating Party's confidentiality designation must do so The parties shall attempt to resolve
17 each challenge in good faith and must begin the process by conferring directly within fourteen
18 days of the date of service of notice (in voice to voice dialogue; other forms of communication
19 are not sufficient) ~~with counsel for the Designating Party~~. In conferring, the ~~C~~challenging Party
20 must explain the basis for its belief that the confidentiality designation was not proper and must
21 give the Designating Party an opportunity to review the designated material, to reconsider the
22 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
23 designation. A ~~C~~challenging Party may proceed to the next stage of the challenge process only if
24 it has engaged in this meet and confer process first or establishes that the Designating Party is
25 unwilling to participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. ~~A Party~~ If the Parties cannot resolve a challenge
27 without court intervention, that elects to press a challenge to a confidentiality designation after
28 considering the justification offered by the Designating Party ~~may~~ shall file and serve a motion

1 under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) ~~that~~
2 ~~identifies the challenged material and sets forth in detail the basis for the challenge~~to retain
3 ~~confidentiality within 21 court days of the initial notice of challenge~~ or within fourteen days of
4 ~~the parties agreeing that the meet and confer process will not resolve their dispute.~~ Each such
5 motion must be accompanied by a competent declaration that affirms that the movant has
6 complied with the meet and confer requirements imposed in the preceding paragraph ~~and that sets~~
7 ~~forth with specificity the justification for the confidentiality designation that was given by the~~
8 ~~Designating Party in the meet and confer dialogue.~~ Failure by the Designating Party to make
9 such a motion or to file such declaration within 21 days shall automatically waive the
10 confidentiality designation for each challenged designation. Notwithstanding this provision, the
11 Challenging Party may file a motion challenging a confidentiality designation at any time if
12 there is good cause for doing so, including a challenge to the designation of a deposition
13 transcript or any portions thereof. Any motion brought pursuant to this provision must be
14 accompanied by a competent declaration affirming that the movant has complied with the meet
15 and confer requirements imposed by the preceding paragraph.

16 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. ~~Frivolous challenges, or those made for an improper purpose (e.g., to harass~~
18 ~~or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party~~
19 ~~to sanctions.~~ Until the court rules on the challenge, all parties shall continue to afford the material
20 in question the level of protection to which it is entitled under the Producing Party's designation.

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is
23 disclosed or produced by another Party or by a non-party in connection with this case only for
24 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
25 disclosed only to the categories of persons and under the conditions described in this Order.
26 When the litigation has been terminated, a Receiving Party must comply with the provisions of
27 section ~~4~~13, below (FINAL DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a

1 location and in a secure manner that ensures that access is limited to the persons authorized under
2 this Order.

3 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
5 disclose any information or item designated CONFIDENTIAL only to:

6 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
7 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
8 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
9 hereto as Exhibit A;

10 (b) the officers, directors, and employees (including House Counsel) of the
11 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
12 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
14 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
15 Protective Order" (Exhibit A);

16 (d) the Court and its personnel;

17 (e) court reporters, their staffs, professional jury or trial consultants, mock jurors,
18 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and
19 who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
22 (Exhibit A) unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
23 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
24 separately bound by the court reporter and may not be disclosed to anyone except as permitted
25 under this Stipulated Protective Order.

26 (g) the author or recipient of the a document containing the information or a
27 person who otherwise possessed or knew or the original source of the information.

28 ~~7.3 Disclosure of "HIGHLY CONFIDENTIAL ATTORNEYS' EYES~~

1 ~~ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by~~
2 ~~the Designating Party, a Receiving Party may disclose any information or item designated~~
3 ~~“HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only to:~~

4 ~~(a) the Receiving Party’s Outside Counsel of record in this action, as well as~~
5 ~~employees of said Counsel to whom it is reasonably necessary to disclose the information for this~~
6 ~~litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached~~
7 ~~hereto as Exhibit A;~~

8 ~~[(b) Optional—as deemed appropriate in case-specific circumstances: House~~
9 ~~Counsel of a Receiving Party (1) who has no involvement in competitive decision-making or in~~
10 ~~patent prosecutions involving _____ [specify subject matter areas], (2) to whom~~
11 ~~disclosure is reasonably necessary for this litigation, and (3) who has signed the “Agreement to~~
12 ~~Be Bound by Protective Order” (Exhibit A);~~

13 ~~(c) Experts (as defined in this Order) (1) to whom disclosure is reasonably~~
14 ~~necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective~~
15 ~~Order” (Exhibit A), [Optional: and (3) as to whom the procedures set forth in paragraph 7.4,~~
16 ~~below, have been followed];~~

17 ~~(d) the Court and its personnel;~~

18 ~~(e) court reporters, their staffs, and professional vendors to whom disclosure is~~
19 ~~reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by~~
20 ~~Protective Order” (Exhibit A); and~~

21 ~~(f) the author of the document or the original source of the information.~~

22 ~~[Optional: 7.4 Procedures for Approving Disclosure of “HIGHLY~~
23 ~~CONFIDENTIAL—ATTORNEYS’ EYES ONLY” Information or Items to “Experts”~~

24 ~~(a) Unless otherwise ordered by the court or agreed in writing by the Designating~~
25 ~~Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any information or~~
26 ~~item that has been designated “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” first~~
27 ~~must make a written request to the Designating Party that (1) identifies the specific HIGHLY~~
28 ~~CONFIDENTIAL information that the Receiving Party seeks permission to disclose to the~~

1 ~~Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary~~
2 ~~residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current~~
3 ~~employer(s), (5) identifies each person or entity from whom the Expert has received~~
4 ~~compensation for work in his or her areas of expertise or to whom the expert has provided~~
5 ~~professional services at any time during the preceding five years, and (6) identifies (by name and~~
6 ~~number of the case, filing date, and location of court) any litigation in connection with which the~~
7 ~~Expert has during the preceding five years.~~

8 ~~(b) A Party that makes a request and provides the information specified in the~~
9 ~~preceding paragraph may disclose the subject Protected Material to the identified Expert unless,~~
10 ~~within seven court days of delivering the request, the Party receives a written objection from the~~
11 ~~Designating Party. Any such objection must set forth in detail the grounds on which it is based.~~

12 ~~(c) A Party that receives a timely written objection must meet and confer with the~~
13 ~~Designating Party (through direct voice to voice dialogue) to try to resolve the matter by~~
14 ~~agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert~~
15 ~~may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-~~
16 ~~5, if applicable) seeking permission from the court to do so. Any such motion must describe the~~
17 ~~circumstances with specificity, set forth in detail the reasons for which the disclosure to the~~
18 ~~Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and~~
19 ~~suggest any additional means that might be used to reduce that risk. In addition, any such motion~~
20 ~~must be accompanied by a competent declaration in which the movant describes the parties'~~
21 ~~efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer~~
22 ~~discussions) and sets forth the reasons advanced by the Designating Party for its refusal to~~
23 ~~approve the disclosure.~~

24 ~~In any such proceeding the Party opposing disclosure to the Expert shall bear the~~
25 ~~burden of proving that the risk of harm that the disclosure would entail (under the safeguards~~
26 ~~proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.~~

27 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
28 OTHER LITIGATION.

1 If a ~~Receiving~~ Party is served with a subpoena or an order issued in other litigation
2 that would compel disclosure of any information or items designated in this action as
3 “CONFIDENTIAL” ~~or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY,”~~ the
4 ~~Receiving~~that Party must:

5 ~~(a) so promptly~~ notify in writing the Designating Party, ~~in writing (by fax, if~~
6 ~~possible) immediately and in no event more than three court days after receiving the subpoena or~~
7 ~~order.~~ Such notification must include a copy of the subpoena or court order.

8
9 ~~(b) The Receiving Party also must immediately promptly notify inform~~ in writing
10 the Party who caused the subpoena or order to issue in the other litigation that some or all the
11 material covered by the subpoena or order is the subject of this Protective Order. ~~In addition, the~~
12 ~~Receiving Party must deliver~~ Such notification shall include a copy of this Stipulated Protective
13 Order ~~promptly to the Party in the other action that caused the subpoena or order to issue; and~~

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
15 Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with the
17 subpoena or order shall not produce any information designated in this action as
18 “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued
19 or obtaining the Designating Party’s permission. The Designating Party shall bear the burdens
20 and the expenses of seeking protection in that court of its confidential material – and nothing in
21 these provisions should be construed as authorizing or encouraging a Receiving Party in this
22 action to disobey a lawful directive from another court.

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
24 PRODUCED IN THIS LITIGATION.

25 (a) The purpose of imposing these duties is to alert the interested parties to the
26 existence of this Protective Order and to afford the Designating Party in this case an opportunity
27 to try to protect its confidentiality interests in the court from which the subpoena or order issued.
28 The Designating Party shall bear the burdens and the expenses of seeking protection in that court

1 ~~of its confidential material— and nothing in these provisions should be construed as authorizing or~~
2 ~~encouraging a Receiving Party in this action to disobey a lawful directive from another court. The~~
3 ~~terms of this Order are applicable to information produced by a non-party in this action and~~
4 ~~designated as “CONFIDENTIAL,” and such information produced by non-parties in connection~~
5 ~~with this litigation is protected by the remedies and relief provided by this Order. Nothing in~~
6 ~~these provisions should be construed as prohibiting a non-party from seeking additional~~
7 ~~protections.~~

8 (b) In the event that a Party is required by a valid discovery request to produce
9 a non-party’s confidential information in its possession and the Party is subject to an agreement
10 with the non-party not to produce the non-party’s confidential information, then the Party shall:

11 1. promptly notify in writing the Requesting Party and the non-party
12 that some or all the confidential information requested is subject to the confidentiality rights of a
13 non-party;

14 2. promptly provide the non-party with a copy of the Stipulated
15 Protective Order in this litigation, the relevant discovery request(s), and a reasonably particular
16 description of the information requested; and

17 3. make the information requested available for inspection by the non-
18 party.

19 (c) If the non-party fails to object or seek a protective order from this Court
20 within fourteen days of receiving the notice and accompanying information, the Receiving Party
21 may produce the non-party’s confidential information responsive to the discovery request. If the
22 non-party timely seeks a protective order, the Receiving Party shall not produce any information
23 in its possession or control that is subject to the confidentiality rights of the non-party.¹ Absent a
24 Court order to the contrary, the Non-Party shall bear the burden and expense of seeking
25 protection in this Court of its Protected Material.

26
27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality
28 rights of a non-party and to afford the interested parties an opportunity to protect their
confidentiality interests in this Court.

1 910. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL If a
2 Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to
3 any person or in any circumstance not authorized under this Stipulated Protective Order, the
4 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
5 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
6 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and
7 (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
8 Bound” that is attached hereto as Exhibit A.

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL. When a producing party gives notice to the other parties that certain
11 inadvertently produced material is subject to a claim of privilege or other protection, the
12 obligations of the parties that received such material are those set forth in Rule 26(b)(5)(B) of the
13 Federal Rules of Civil Procedure. This provision is not intended to modify whatever procedure
14 may be established in an e-discovery order that provides for production without prior privilege
15 review.

16 120. FILING PROTECTED MATERIAL. Without written permission from the
17 Designating Party or a court order secured after appropriate notice to all interested persons, a
18 Party may not file in the public record in this action any Protected Material. A Party that seeks to
19 file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected
20 material may only be filed under seal pursuant to a Court order authorizing the sealing of the
21 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue
22 only upon a request establishing that the Protected Material at issue is privileged or protectable as
23 a trade secret or otherwise entitled to protection under the law.

24 134. FINAL DISPOSITION. ~~Unless otherwise ordered or agreed in writing by the~~
25 ~~Producing Party, w~~Within sixty days after the final ~~termination-disposition~~ of this action, ~~as~~
26 ~~defined in paragraph 4,~~ each Receiving Party must ~~return all Protected Material to the Producing~~
27 ~~Party or destroy such material.~~ As used in this subdivision, “all Protected Material” includes all
28 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of

1 the Protected Material. ~~With permission in writing from the Designating Party, the Receiving~~
2 ~~Party may destroy some or all of the Protected Material instead of returning it.~~ Whether the
3 Protected Material is returned or destroyed, the Receiving Party must submit a written
4 certification to the Producing Party (and, if not the same person or entity, to the Designating
5 Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected
6 Material that was returned or destroyed and that affirms that the Receiving Party has not retained
7 any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of
8 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
9 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
10 correspondence, deposition and trial exhibits, expert reports, ~~or~~ attorney work product and
11 consultant and expert work product, even if such materials contain Protected Material. Any such
12 archival copies that contain or constitute Protected Material remain subject to this Protective
13 Order as set forth in Section 4 (DURATION), above.

14 ~~12~~14. MISCELLANEOUS

15 ~~12~~14.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 ~~12~~14.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order no Party waives any right it otherwise would have to object to disclosing or
19 producing any information or item on any ground not addressed in this Stipulated Protective
20 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of
21 the material covered by this Protective Order.

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27 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
28

1 DATED: _____
2 Attorneys for Plaintiff

3 DATED: _____
4 Attorneys for Defendant

5 PURSUANT TO STIPULATION, IT IS SO ORDERED.

6 DATED: _____
7 [name of judge]
8 United States District/Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have read
in its entirety and understand the Stipulated Protective Order that was issued by the United States
District Court for the Northern District of California on [date] in the case of _____ **[insert
formal name of the case and the number and initials assigned to it by the court]**. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any information or
item that is subject to this Stipulated Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Northern District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

Proposed Changes Not Reflected in the Redline

The Committee proposes reorganizing the sections of the Model Order to provide a more cohesive order that is easier to navigate. The following order of sections is recommended: (1) Purposes and Limitations; (2) Definitions; (3) Scope; (4) Duration; (5) Designating Protected Material; (6) Challenging Confidentiality Designations; (7) Access to And Use of Protected Material; (8) Protected Material Subpoenaed or Ordered Produced in Other Litigation; (9) A Non-Party's Protected Material Sought to Be Produced in This Litigation; (10) Unauthorized Disclosure of Protected Material; (11) Inadvertent Production of Privileged or Otherwise Protected Material; (12) Miscellaneous (including Filing Protected Material as a subsection); (13) Final Disposition.

The Committee also proposes listing definitions alphabetically. These organizations are not implemented in the Committee's redline of the current Model Order so that other recommendations are easier to view.